



POLICE DEPARTMENT CITY OF NEW YORK

January 24, 2017

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Philip Terpos
Tax Registry No. 931314
42 Precinct
Disciplinary Case No. 2015-14238

Charges and Specifications:

1. Probationary Lieutenant Philip Terpos,¹ while assigned to the 32nd Precinct, on or about May 25, 2014, while on-duty and in New York County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Lieutenant Terpos wrongfully and improperly ordered/directed a police officer to change the Grand Larceny crime classification to Petit Larceny on a Complaint Report.
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED
CONDUCT
New York City Police Department Crime Complaint Reporting System Reference
Guide, Page 26 – CLASSIFICATION OF LARCENY
2. Probationary Lieutenant Philip Terpos, while assigned to the 32nd Precinct, on or about May 25, 2014, while on-duty and in New York County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Lieutenant Terpos wrongfully and improperly ordered/directed a police officer to change the property value reported on a Complainant's Report of Lost or Stolen Property/Identity Theft form from \$1,400 to \$500.
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED
CONDUCT
New York City Police Department Crime Complaint Reporting System Reference
Guide, Page 26 – CLASSIFICATION OF LARCENY

Appearances:

For the Department: Scott Rosenberg, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

¹ Respondent held the rank of sergeant on May 25, 2014. He was promoted to lieutenant on April 24, 2015.

For Respondent: Philip Karasyk, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
New York, New York 10279

Hearing Dates:
October 6 and October 13, 2016

Decision:
Respondent is found Guilty

Trial Commissioner:
ADCT Robert W. Vinal

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on October 6 and October 13, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Sergeant William Butler, Lieutenant Michael Brill, and Police Officer Robert Brid as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, Respondent is found Guilty.

FINDINGS AND ANALYSIS

It is not disputed that on May 24, 2014, Police Officer Robert Brid, who was assigned to the 32 Precinct, was on duty at an Impact foot post at 144th Street and 8th Avenue, Manhattan. Respondent was Brid's Impact supervisor. At about 2300 hours, Brid was approached by [REDACTED] who reported that his Motobecane bicycle had just been stolen. Brid prepared a handwritten Complaint Report Worksheet (Dept. Ex. 1) and a handwritten Complainant's Report

Lost or Stolen Property/Identity Theft worksheet (Dept. Ex. 2). On both reports he listed the "value" of the stolen Motobecane bicycle as "\$1,400.00," and on Complaint Report Worksheet he classified the theft as a "grand larceny." At about 0330 hours on May 25, 2014, when Brid returned to the 32 Precinct for return roll call, he encountered Police Officer William Butler,² the command's training officer, and Respondent.

Brid testified that he handed Respondent the "scratch copy" of the Complaint Report for the stolen bicycle and a discussion regarding the valuation of the bicycle ensued. Respondent directed that an internet search of the price of a Motobecane bicycle be conducted. Using his cell phone, Butler conducted a Google search that lasted approximately one minute. Based on the results of that search, Respondent instructed Brid to change the value of the bicycle listed on both the Complaint Report and the Lost/Stolen Property worksheet from \$1,400 to \$500 and reclassify the complaint a petit larceny. Brid crossed out the words "Grand Larceny," initialed next to the change and wrote in "Petit Larceny" on the Complaint Report. He also crossed out "\$1,400" on the Lost/Stolen Property Worksheet, and wrote in "\$500," again adding his initials next to the change. Brid amended the narrative section of the Complaint Report, adding "C/V stated bicycle has high value, price check revealed bike has an average value of \$500 or less." (Dept. Ex. 1).

Butler testified that he and Respondent both questioned Brid about the value of the bicycle listed on the complaint report he was submitting for approval. They questioned what type of bicycle it was and why it was so expensive. Brid stated that the complainant had purchased the bike or had received the bike as a gift and that he was told the value of the bike was \$1,400.00. Butler conducted an internet search using his cell phone of the type of bicycle

² Butler has since been promoted to the rank of sergeant.

that was listed on the Complaint Report and showed the results to Respondent. Respondent then instructed Brid to list the bicycle's worth as the highest dollar amount listed for a bicycle of that manufacture based on Butler's internet search. Butler testified that in his opinion the changes Respondent directed Brid to make to the complaint report were appropriate under the Crime Complaint Reporting System Reference Guide and the Patrol Guide and that due to the fact that it was almost 0400 hours and their tour of duty was ending, the Complaint Report needed to be signed off on and entered into the system immediately.

Lieutenant Michael Brill, team leader of the Quality Assurance Division's Confidential Investigations Team, supervises a team that investigates allegations of improper crime reporting. Brill testified that beginning in November 2014, his team was tasked with investigating allegations that the Commanding Officer of the 32 Precinct was downgrading felonies to misdemeanors on complaint reports. His Quality Assurance Division (QAD) team conducted an audit of nearly one thousand reports generated by the 32 Precinct, including the Complaint Report prepared by Brid on May 25, 2014.

Brill conducted an official Department interview of Respondent on July 12, 2015. During that interview, Respondent recalled calling into question the classification of the Complaint Report taken by Brid based on the listed valuation of the bicycle. Respondent stated that he believed the listed dollar value was too high because "\$1,400.00 was five times higher than the price for any bike I had ever heard of." He requested that an internet price check be performed for the bicycle and that, based on this price check, he directed Brid to change the value of the bicycle to \$500.00 and to change the crime classification on the report from a grand larceny to a petit larceny. Brill testified that the Crime Complaint Reporting System Reference Guide is designed to assist officers in determining the classification of reports. Brill explained

that this Guide states that the dollar value that a complainant cites for an item of property that has been stolen should be utilized in virtually all instances. However, if it is suspected that a complainant is exaggerating the value of the property for insurance or other reasons, a fair market value of the item should be determined and utilized. Brill agreed that the internet may be used to search for a specific item of property and to identify an accurate present market value for that item. Brill testified that there is no guideline for determining whether a victim is exaggerating the value of stolen property and that such a determination is a judgment call to be made by the responding officer.

Brill agreed that a supervisor may change a complaint report that the supervisor feels is not accurate. He acknowledged that Brid's "scratch copy" of the complaint report relating to this particular theft, was readily found by QAD at the 32 Precinct and that the original grand larceny crime classification had been crossed out and replaced with petit larceny. He also acknowledged that there appeared to be no effort to conceal or erase the original crime classification and the subsequent reclassification.

Brill testified that Respondent, during his official Department interview, did not attempt to hide or obscure the fact that he had directed Brid to reclassify the crime on the complaint report from a grand larceny to a petit larceny. There was no evidence that Respondent was being pressured to downgrade crimes. During QAD's investigation regarding the 32 Precinct, no other complaint reports that Respondent had reviewed and signed were found to have discrepancies or improprieties.

Respondent testified that when Brid handed him his handwritten "scratch copy" of a Complaint Report for a grand larceny that morning, his attention was immediately drawn to the portion of the report which indicated that no supervisor was called to the scene (because Brid

was required to radio for a supervisor to respond to the scene). Respondent then noticed that a type of bicycle he had never heard of before was listed as having a value of \$1,400.00. Because Respondent thought that this dollar figure was very high for a bicycle, he questioned Brid as to how he had determined this value. Brid told Respondent the complainant had indicated that he had purchased the bike for \$1,400 and that he believed that the bike was a few years old at the time of the theft. Respondent informed Brid that the value of stolen property is to be determined by its worth at the time of the theft, not the price that was paid when it was purchased. As a result, the complaint was incorrect and needed to be changed to reflect the actual value of the bicycle at the time it was stolen.

Respondent testified that because his conversation with Brid took place at about 0345 hours, it would have been inappropriate to call the complainant at home and wake him up. Respondent felt that the only tool at his disposal to determine the proper value of the bicycle was the internet. He directed that a Google Shopping Market search be conducted to determine the actual value of the bicycle. Since the results of the search indicated that the value of bicycles made by that particular manufacturer "were well under \$1,000.00," with prices ranging from \$300.00 to \$700.00, Respondent determined that the complaint should be reclassified as a petit larceny.

As the Impact Sergeant, he was required to sign off on all Complaint Reports before the end of his tour. Any changes that needed to be made could be done by editing reports at a later date. At the time he directed that the internet search be conducted, Brid did not know anything about the complainant's stolen bicycle other than that it was manufactured by Motobecane. He asserted that based on the internet search, he was able to determine the average value of such a bicycle, which he believed more accurately reflected the actual value of the stolen bicycle than

the purchase price the complainant had given to Brid, since he knew that the value of a bicycle depreciates over time.

Analysis

Most of the facts regarding this matter are not in dispute. Since Respondent was responsible for closely scrutinizing the work of the inexperienced officers assigned to Impact, he was required to review all complaint reports drafted by Impact officers for completeness and accuracy. Thus, in reviewing Brid's complaint report worksheet after Brid arrived at the stationhouse, Respondent was only doing his job. Respondent does not dispute that he directed Brid to change the value of the stolen bicycle from \$1,400.00 to \$500.00 on both the Complaint Report Worksheet and the Lost/Stolen Property worksheet and to reclassify the complaint as a petit larceny. The question presented is whether the valuation change Respondent directed Brid to make was done in compliance with the provisions of the Department's Crime Complaint Reporting System Reference Guide (CCSRG).

The Advocate cited to Subdivision 1 of the CCSRSG section "Determining the Value of Property Stolen," which states: "The victim's statement regarding the value of the property will be accepted in virtually all cases." The Advocate argued that since Kazadi told Brid that he had paid \$1,400.00 for the bicycle (Tr. 97), Brid properly relied on the victim's statement and, thus, Brid's entries on both reports that the "value" of the stolen bicycle was \$1,400.00 and his classification of the theft as a grand larceny should not have been changed by Respondent.

However, New York Penal Law §155.20, "Larceny; value of stolen property," states that "value means the market value of the property at the time and place of the crime..." This definition has been incorporated into the CCSRSG. Subdivision 4 of the CCSRSG section

“Determining the Value of Property Stolen” states: “Value of an item is the market value [double emphasis in original] of the property at the time and place of the theft.” Thus, instead of asking [REDACTED] how much he had paid for the bike, Brid should have asked [REDACTED] how much the bike was worth on May 24, 2014, the date of the theft.

It is clear that Brid did not attempt to ascertain the value of the bike on the day it was stolen. Brid did not obtain from [REDACTED] the specific model number of his Motobecane bike (Tr. 87, 135), and Brid did not ask [REDACTED] how long he had owned the bike. That Brid could have obtained the purchase date from [REDACTED] is established by Brill’s testimony that when QAD interviewed [REDACTED] he stated that he had purchased the bike in 2010 for \$1,400.00. (Tr. 62-63) Since Kazadi had been using the bike for four years, it is unlikely that at the time it was stolen the bike was still worth what [REDACTED] had paid for it unless [REDACTED] had paid for improvements to the bike, which Brid also did not ask him about. Although the price paid at the time of the purchase is a factor in determining a bike’s market value, if Brid had learned from [REDACTED] that he had owned and used the bike for four years and that no improvements had been made to the bike, the market value of the bike would have been less than \$1,400.00.

As a result of Brid’s failure to obtain from [REDACTED] information that would have been of value in assessing the market value of the bicycle at the time it was stolen, when Brid arrived at the stationhouse at 0330 hours and Respondent asked him how he had arrived at the stolen property valuation figure of \$1,400.00, the only information Brid could supply Respondent was the name of the manufacturer of the stolen bike: Motobecane. Thus, it was not improper for Respondent to attempt to ascertain the present market value of the bicycle.

However, in directing Brid to change the value of the stolen bicycle from \$1,400.00 to \$500.00, Respondent did not comply with the CCRSRG’s detailed procedures for determining

the fair market value of the bicycle. Subdivision 11 of CCRSRG section "Determining the Value of Property Stolen" states:

When determining the market value, only "markets" where sales of the item occur with some regularity and uniformity may be used. Legitimate dealers, recognized current trade books, and NYPD resources, may be used. For example:

- A. Internet sources of legitimate dealers/ manufacturers may be used, e.g., Toyota, Honda, Best Buy, etc.
- B. Internet sources of recognized current trade books may be used, e.g., Kelley Blue Book (KBB.com) for vehicle prices.

***Note:** Internet auctions sites and sites such as "Ebay.com" and "Strong Numbers.com" are not acceptable sources.*

Respondent testified that he directed that an internet search be conducted to determine the present market value of a Motobecane bicycle and that either Brid or Butler accessed "Google Shopping Market where bicycles are commonly sold, and the market value was established..." (Tr. 113). Butler testified that he used his cell phone to conduct the search and that he showed the results of his search to Brid and to Respondent. (Tr. 30). Respondent testified that this search showed that "all of the values that were listed in the search were well under \$1,000.00," with prices ranging from "\$300 to \$700." (Tr. 113-114).

Google Shopping Market is not listed in Subdivision 11 of the CCRSRG section "Determining the Value of Property Stolen" as an acceptable source for determining the market value of an item of property and Respondent offered no support for his contention that Google Shopping was "the only useful tool that we could use" at the time. (Tr. 113). Thus, I find that Respondent did not comply with the CCRSRG's detailed procedures for determining the fair market value of the bike.

Butler corroborated Respondent's claims that because it was 0330 hours they decided not to call the complainant at home, and that because they were all going end of tour at 0400 hours

and all complaint reports prepared by Impact officers had to be signed off by Respondent and entered into the system before their tours ended, Respondent was under time period pressure to sign off on Brid's complaint report before he "went end of tour." (Tr. 29, 117-118)

However, these factors do not, in and of themselves, justify Respondent's actions of directing Brid to change the value of the stolen bicycle from \$1,400.00 to \$500.00, and to change the classification on the Complaint Report from a grand larceny to a petit larceny. Respondent admitted that even though he could have directed Brid or someone else to call the complainant later to obtain more information about the bike, he did not do so. (Tr. 146, 154). Instead, he "instructed Officer Brid to leave it open to the detective squad for the assigned detective to speak to the complainant and actually investigate the theft." (Tr. 145). Most significantly, he conceded that if he had approved Brid's Complaint Report as written, he could have made any changes that needed to be made to the report at a later time. (Tr. 154).

Thus, Respondent's own testimony establishes that he could have signed off on Brid's original Complaint Report (reporting the value of the bike as \$1,400.00 and classifying the theft as a grand larceny) and either directed Brid or someone else to call the complainant at a more hospitable hour or left it to the assigned detective to speak to the complainant.

Respondent is found Guilty.

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 1, 2002. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached Confidential Memorandum. Respondent has no prior disciplinary adjudications.

The Advocate recommended that Respondent forfeit ten vacation days as a penalty. The Advocate did not cite any previous disciplinary decisions to support his recommendation.

In *Case No. 2013-9818* (Oct. 13, 2015), a captain who had no prior disciplinary record forfeited 15 vacation days as a penalty after he was found guilty at trial of causing inaccurate entries to be made on three complaint reports. He improperly lowered the value of two stolen bikes on two separate complaint reports to reclassify the thefts as petit larcenies rather than grand larcenies, and he deleted pertinent facts from another complaint report in order to reclassify a felony assault as a misdemeanor assault. In recommending that the captain forfeit 15 vacation days as a penalty, the Trial Commissioner wrote that the captain "appeared to have acted under a sincere, though mistaken, belief that the crimes should be classified as misdemeanors and not felonies."

The record here indicates that Respondent also acted under a sincere belief that the theft of the bike should be classified as a misdemeanor and not a felony, because Respondent candidly acknowledged at his official Department interview that he had directed Brid to reclassify the theft as a petit larceny and because he did not attempt to cover up this action by destroying Brid's handwritten complaint report worksheet or his handwritten Lost/Stolen Property worksheet. Brid's worksheets, complete with cross outs, were readily found at the 32 Precinct by QAD investigators. Also, none of the other complaint reports that Respondent had signed off on that were reviewed by QAD were found to have any discrepancies or improprieties.

Recently, in *Case No. 2015-14241* (Aug. 8, 2016), a lieutenant who, like the Respondent here, had no prior disciplinary record was found guilty after trial of improperly directing a police officer to change the crime classification on a complaint report from a felony (grand larceny) to a non-crime (lost property), and he was also found guilty of wrongfully directing the officer to


prepare a false factual narrative in the Details section of the complaint report. Although the Trial Commissioner recommended that the lieutenant forfeit 15 vacation days as a penalty, the Police Commissioner deemed that a lesser penalty was warranted and imposed a penalty consisting of the forfeiture of ten vacation days.

Here, in contrast, by directing Brid to change the value of the stolen bike on his worksheets, Respondent reclassified the theft from a felony crime (grand larceny) to a misdemeanor crime (petit larceny), not to a non-crime. Moreover, Respondent did not direct Brid to prepare a false factual narrative regarding the theft in the Details section of his complaint report.

Finally, in determining an appropriate penalty recommendation, I have taken into consideration Respondent's consistently excellent performance evaluations and the fact that he has no previous disciplinary record during his 14 years of service.

Therefore, it is recommended that Respondent forfeit five vacation days as a penalty.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED

MAR 27 2017



JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT PHILIP TERPOS
TAX REGISTRY NO. 931314
DISCIPLINARY CASE NO. 2015-14238

Respondent received an overall rating of 4.0 on his 2015-2016 probationary lieutenant performance evaluations, 4.5 on his 2014 annual evaluation, and 4.5 on his 2013 annual evaluation. He has been awarded two Meritorious Police Duty medals. [REDACTED]
[REDACTED] He has no prior formal disciplinary record and no monitoring records.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner Trials